



**KENYA COPYRIGHT BOARD**



**A Guide to**  
**Copyright**  
**in Kenya**

**Kenya Copyright Board**





# ***A Guide to Copyright in Kenya***

**T**his booklet is intended to provide an introduction and basic guidelines on copyright and related rights in Kenya. It gives an overview of copyright and related rights from a layperson's point of view. It is intended to provide a better understanding on copyright especially for the various rights holders within the copyright industry.

## ***Intellectual Property***

Intellectual Property is an area of the law that protects and promotes creations of the mind. There are two main branches of intellectual property, namely, Industrial Property and Copyright. Industrial Property includes trademarks, patents, industrial designs, utility models, service marks, and layout designs of integrated circuits, commercial names, geographical indications and protection against unfair competition. In some countries, plant varieties may be protected under patent law but in Kenya there exists a separate system under the Seeds and Plant Varieties Act. Industrial Property in Kenya is administered under the Trademarks Act and the Industrial Property Act by the Kenya Industrial Property Institute.

Copyright, on the other hand relates to literary, artistic and musical works. These include books, computer programs, music, films, photographs, art, and sculptures among others.

## ***What is copyright?***

Copyright (*baki miliki* in Kiswahili) refers to an exclusive bundle of rights granted by law to authors of literary works; producers of audio-visual works and films; architects; performers; broadcasters and other creators of literary, musical, artistic, audio-visual, sound recordings and broadcasts.

## ***Why protect Copyright?***

Copyright protection is motivated by the state's desire to balance the interests of the public and those of creators. It is in the public interest that creators of artistic works are motivated for them to promote their



creative activity for cultural, social and industrial progress of the state. The Copyright system therefore provides the legal safeguards necessary for creativity to thrive. This it does by safeguarding the interests of the right holders and at the same time giving them an incentive to create. Where the creative authors are assured that their rights will be protected and enforced, creative industries thrive.

Creative industries such as music, computer programs, books among others are the driving force behind economic recovery and development. It is notable, that copyright, unlike other intellectual property rights, require lower capital to produce and disseminate. The new technologies have made this easier and thus copyright can be a source of intellectual capital.

### **What does copyright protect?**

*(Ideas/ expression dichotomy)*

Copyright protects the expression of an idea from being copied without authority. It does not protect the concept or the idea. It also does not protect logos, symbols, titles, short phrases or factual information that may be contained in a copyright work.

### **Authorship and Ownership under Copyright Law**

The first owner of a copyright work is its creator. An author in case of:

- Literary work is the person who wrote the work. This also is true for software, which is treated as a literary work.
- Musical works -the composer
- Sound recording -the producer
- Cinematographic work -the producer
- Photograph -the photographer
- Computer generated work -the person who caused the work to be generated.

An author may, however licence or transfer his rights, wholly or in part, the same way physical property is dealt with. All assignments or licenses must be in writing as required by the Copyright Act: This results in ownership being held by a person who is not the author.

A person who creates a work during employment or on commission may own the copyright if there is agreement to that effect.



## **Works Covered by Copyright**

The works falling under the following categories are copyright works:

- Literary
- Musical
- Audio-visual
- Artistic works
- Sound recordings
- Broadcasts

These include novels, poems, plays, computer programmes, databases, films, musical compositions, broadcasts, photographs, sculptures, architectural drawings and maps amongst others.

## **Rights under copyright**

Copyright protection offers a rights owner the following:

- Economic rights
- Related rights
- Moral rights

## **Economic rights**

These are the rights to:

- Reproduce in any material form
- Adapt or translate
- Distribute to the public by way of sale, rent, lease, hire, loan, importation
- Broadcast whole or part of the work
- Communicate the work to the public
- Perform the work in public

Any unauthorized exercise of these rights is infringement of copyright. The law provides for criminal sanction and civil remedies to the rights holder in the case of copyright infringement.

## **Moral rights**

This entitles the author to claim authorship of the work and object to distortion or mutilation prejudicial to his honour or reputation. These rights are independent of the economic rights and are non-transferable at all.



## **Related Rights**

- Rights of producers of sound recordings
- Broadcasters' rights.
- Performers' rights

## **Term of Copyright**

Copyright protection varies from work to work depending on authorship and their nature. In majority of instances, however, copyright protection is available for 50 years.

Copyright protection lasts for the life of the author plus 50 years. If the author is unknown, the period of protection is 50 years from date it is published.

Audio-visual works, photographs, sound recordings and broadcasts are protected for 50 years from the date of first publication.

## **Foreign works**

Foreign works in Kenya are protected. This applies to all foreign works of member states of the World Trade Organization and Berne Convention which are eligible for protection in their respective countries. It is expected that judicial offices take judicial notice and enforce this provision..,

## **Exceptions and Limitations**

Not all uses of a work protected by copyright without express permission amounts to infringement. There are certain circumstances where such use is allowed by law. This is known as fair dealing. This constitutes the payoff that the creator owes to the state in return for the exclusive economic benefit granted by the copyright law.

The law permits the exercise of the author's reserved rights for:

- Research
- Private use
- Criticism or review
- Reporting of current events

All this is subject to acknowledgement of the source. Note that fair dealing provisions are more stringent in case of computer programs.



### **First Ownership**

The initial ownership of copyright vests in the creator of the work. Where the work has been created during the course of employment or on commission, the employer or the person who commissioned the work is deemed to be the owner.

### **Assignment and Licensing**

The copyright owner has the right to sell, license or bequeath his economic rights to another person. The transfer of these rights should be in writing. The rights may be transferred in part or in full. Once the rights have been sold, the person who sold them (or assigned them) will no longer have any claim to them. However, in the case of a license, the rights will revert to the person who licensed them once the license comes to an end.

### **International Copyright Regime**

Kenya is a member of the World Trade Organization. The WTO Treaty includes Trade Related Aspects of Intellectual Property (TRIPS) Agreement that defines new international standards of intellectual property. The TRIPS Agreement adopts the minimum standards of the Berne Convention except for minimal changes.

### **Registration of Copyright**

Copyright protection is vested in the work once it is in a concrete form without need for registration. This position is observed worldwide. The Copyright Board is however required under the Act to maintain a databank of authors and their works by registering copyright works. This registration is voluntary. Non-registration does not deny authors any rights under the Copyright Act.

Requirements for registration are as hereunder:

- The work must be of original authorship. It must not be copied
- The work must be in a tangible form including digital form for example CD, books, music cassettes.
- Two copies of the work submitted with the application.
- A duly completed form duly filled and commissioned.



The Board, may, after making enquiries, decide whether to register the work or not.

### **Importance of registration of Copyright works**

- Acts as a public record of authors
- The registration facilitates the implementation of the anti-piracy security device.

### **Infringement of Copyright**

Infringement occurs if a person other than the author or someone authorized by him, does any of the following acts: reproduction, translation, adaptation, performance, sale or hire of the work. These rights are exclusive domain of the author/owner.

### **Policing of Rights**

Copyright is a private right. The copyright owner is therefore expected to closely monitor the market to detect any infringement and initiate legal action. Government agencies, including the Copyright Board and the Police, cannot act without a complaint being made to them. Further, where a complaint is made to the Police and an arrest made, a suspect may be released if the complainant fails to appear in court.

### **Offences under Copyright Act**

There are several offences under the Act in relation to infringement in the Copyright. The Copyright owner may lodge a complaint with the police and have the infringer prosecuted. If the suspect is found guilty, he may be fined and/or jailed. However, pirate works are liable to be destroyed whether or not a suspect is found guilty.

It is important to note that only the Resident Magistrate's Court or the High Court has jurisdiction over copyright matters.

### **Civil Action**

The author of infringed works may pursue civil action against the infringing person and is entitled, under the act to

- Injunctions to stop the infringing action
- Damages for losses suffered or account of profits.
- Seizure of infringing copies by way of an Anton Pillar orders.



The court, where it determines an infringement has taken place may order for the destruction of the infringing items or disposal in any other manner that it may deem fit.

### **Criminal Action**

The right holder may also choose to pursue criminal action against the infringer. The criminal sanctions include:

- Maximum fines of up to Kshs 800,000/ =
- Maximum custodial sentence of up to 10 years
- Both fines and custodial sentences.

Criminal and civil actions are non-exclusive and may proceed concurrently.

### **Folklore**

Where one wishes to use traditional cultural expressions (folklore) for commercial purposes, one is required to get the authority from the Kenya Copyright Board. The money collected in fees will be used in the promotion of cultural activities in the country.

### **Collective management of rights**

The Board is responsible for licensing and supervision of Collective Management Societies (CMOs). Every sector of the Copyright Industry may have one CMO licensed. The Board has issued guidelines for licensing of CMOs under the Copyright Act. However the collective management organizations are private firms and are governed by their Memorandum and Articles of Association, and decisions of their members and Boards. The license is for a period of one year.

### **Digital Copyright**

The Copyright Act has incorporated the provisions of the two WIPO Internet Treaties; The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties address issues that arose with the use of copyright works in the digital environment. The Copyright Act makes it an offence to circumvent any technical measures designed to protect copyright works or to remove any rights management information.



### *The Role of the Kenya Copyright Board and Secretariat*

The Kenya Copyright Board is a statutory body established to regulate affairs in the Copyright Industry. The major functions of the Board are:

- Licensing and supervision Collective management organizations
- Prosecution of Copyright cases.
- Inspection and enforcement actions
- Advising the government on Copyright issues.
- Training, awareness raising and advocacy on Copyright matters.
- Managing legislation
- Registering copyright
- Administration all matters of copyright and related rights in Kenya.
- Offer advice to the public on copyright law
- Creating and maintaining a database on copyright works in Kenya
- Administering the anti piracy security device

For these reasons the Secretariat has State Counsel qualified in the area of Copyright law and police officers led by acting Executive Director. The secretariat works under the general policy direction of a Board and the Attorney General.









**Kenya Copyright Board**

**N.H.I.F. Building, Ragati Road**

**P.O. Box 34670 - 00100, Nairobi**

**Tel: +254 20 2533859, +254 20 2533869**

**[www.copyright.go.ke](http://www.copyright.go.ke) Email: [info@copyright.go.ke](mailto:info@copyright.go.ke)**

